



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 14, 1991

Mr. G. Michael Gruber
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Attorneys and Counselors
901 Main Street, Suite 6000
Dallas, Texas 75202-3797

OR91-281

Dear Mr. Gruber:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11797.

You indicate that the Texas High-Speed Authority received a request, under date of February 22, 1991, for certain proposals received by the Authority in response to a request for proposals dated August 15, 1990. The Authority received 34 proposals. You state the Authority seeks to withhold only those portions of each proposal which "relate to cost and pricing information," pursuant to section 3(a)(1) of the Open Records Act.

Section 3(a)(10) excepts "trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or by judicial decision." As to the "commercial and financial information" portion of this exception, you submit the following:

'This detailed [cost and pricing] information reveals how much these consultants believe they can and must charge to do a certain scope of work. It reveals what specific hourly charge is attributed to individual employees. It reveals to the public and competitors the details of what compensation these applicants believe they must receive to perform a job *and* earn a profit. Any competitors knowing these applicants' specific costs and pricing strategies could underprice future bids until these applicants were driven out of the market.'

In numerous open records decisions, this office has said that the factors to be considered in determining whether information is excepted by the "commercial and financial information" aspect of section 3(a)(10) are twofold: 1) whether release would impair future cooperation with the governmental body; and 2) whether an entity might suffer substantial competitive harm from release of the information. *See, e.g.*, Open Records Decision Nos. 568; 552 (1990); 520 (1989); 514 (1988). In our opinion, your statement about the possible competitive harm which might result from release of this cost and pricing information constitutes a *prima facie* case that the information should be withheld. The requestor has submitted "no opposing argument that, *as a matter of law*, the information in question cannot be considered" excepted "commercial or financial information" under section 3(a)(10). Open Records Decision No. 552 (1990). As a result, we must advise that the Texas High-Speed Rail Authority should withhold the requested information pursuant to section 3(a)(10) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-281.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/mc

Ref.: ID# 11797

Enclosures: Open Records Decision Nos. 568; 552 (1990); 520 (1989); 514 (1988).

cc: Mr. Thomas M. Pollan
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